

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DIAN POTTER

Claimant

VS.

K-MART CORPORATION

Respondent

Self-Insured

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Docket No. 125,604

ORDER

Respondent requests consideration by the Workers Compensation Appeals Board of its Motion for Reconsideration filed in the above matter.

APPEARANCES

Claimant appeared by and through her attorney, Sally G. Kelsey of Lawrence, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Gregory D. Worth of Lenexa, Kansas. There were no other appearances.

ISSUES

This matter is before the Workers Compensation Appeals Board upon respondent's Motion for Reconsideration of an Appeals Board Order of September 25, 1996. Respondent further requests the Appeals Board accept jurisdiction over and decide the issues presented in the original appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was originally appealed to the Appeals Board from an Order of Administrative Law Judge Floyd V. Palmer dated July 17, 1996, wherein Judge Palmer granted claimant's motion for an extension of terminal dates and for an independent

medical examination. A timely appeal was perfected to the Appeals Board. By its Order of September 25, 1996, the Appeals Board found it did not have jurisdiction to consider the appeal and dismissed the respondent's application for review of Judge Palmer's July 17, 1996, Order.

On March 24, 1997, respondent filed its Motion for Reconsideration of this Appeals Board Order. Respondent cited Shain v. Boeing Military Airplanes, 22 Kan. App. 2d 913, 924 P.2d 1280 (1996) in support of its contention that the Appeals Board did have jurisdiction over the issues being raised from Judge Palmer's July 17, 1996 Order. Respondent requests the Appeals Board accept jurisdiction over the issues raised in Judge Palmer's Order and enter an order denying claimant's motion for extension of terminal dates and reversing Judge Palmer's Order granting claimant's request for the appointment of a physician to conduct an independent medical examination.

While respondent cites authority indicating the Appeals Board could, subsequent to Shain, take jurisdiction over the issues raised from Judge Palmer's Order of July 17, 1996, respondent cites no authority under the Workers Compensation Act which would allow the Appeals Board to reconsider its September 25, 1996, Order.

K.S.A. 60-259 allows new trials to be granted and motions to alter or amend judgment when dealing with the rules of civil procedure under Chapter 60. Also, under K.S.A. 60-259 a motion for a new trial or a motion to alter or amend judgment must be filed within ten days after the entry of judgment. The Appeals Board acknowledges Chapter 60 is normally not applicable to workers compensation litigation. See Jones v. Continental Can Co., 260 Kan. 547 (1996). Arguendo, even if the allowances under Chapter 60 were applicable to workers compensation matters, the March 24, 1997, motion filed by respondent would be untimely from the September 25, 1996, Appeals Board decision.

The Workers Compensation Act, when considering motions for reconsideration of Appeals Board decisions is even more restrictive than Chapter 60. There is no provision in the Workers Compensation Act which would allow the Appeals Board to reconsider one of its opinions absent an appeal from an administrative law judge's decision or, in the alternative, a remand from the appellate courts. Neither of those exists in this case.

Therefore, the Appeals Board finds respondent's Motion for Reconsideration cannot be considered under these circumstances and should be dismissed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Motion for Reconsideration filed by respondent should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Sally G. Kelsey, Lawrence, KS
Gregory D. Worth, Lenexa, KS
Office of Administrative Law Judge, Overland Park, KS
Philip S. Harness, Director